IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6939 of 2007()

(IN CRIME NO.171/07 OF VELLOOR POLICE STATION)

PETITIONERS/ACCUSED:

THAMBI, S//O.KARUMBAN,
URAKANAMKUZHI HOUSE, KARIKKODE P.O.,
PERUVA, KOTTAYAM DISTRICT.

BY ADV. SRI.DILIP MOHAN
SRI.N.HARIMOHAN

RESPONDENTS: COMPLAINANT/STATE:

1. **STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **STATION HOUSE OFFICER, VELLOOR POLICE STATION, KOTTAYAM DISTRICT.**

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

B.A.No.6939 of 2007

Dated this the 15th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the husband of the defacto complainant. He faces allegations in a crime registered under Section 498 A I.P.C. The crime has been registered on the basis of a complaint filed by the defacto complainant before the Superintendent of Police, Kottayam, which was forwarded to the local Police Station for necessary action.

2. The marriage took place in 1988. 3 children are born in the wedlock. The spouses had a rough ride all along. Many times they had separated, but in her anxiety to save the marriage in the interests of her 3 children, the defacto complainant had allegedly returned to the petitioner to resume co-habitation. He allegedly continues his old ways and refuses to mend his questionable conduct. The complaint filed by the defacto complainant makes very sad reading of the trauma which has been inflicted on her by the petitioner. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Anticipatory bail may, in these circumstances, be granted to the petitioner.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that in the peculiar facts and

circumstances of this case, it has to be held that notwithstanding the long period of matrimony and the birth of 3 children in the wedlock, the petitioner, who has criminal antecedents, is not entitled for anticipatory bail. The petitioner may be directed to resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate. He may be directed to seek regular bail thereafter.

5. I have considered all the relevant inputs. The case diary has been placed before me. I have gone through the same. Having considered all the relevant circumstances, I am certainly of the opinion that there are no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I fully agree with the learned Public Prosecutor that the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-